UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDRES FABRIS and ANDREW CHEN

Appeal 2016-007533
Application 12/387,694[1]
Technology Center 3628

Before KRISTEN L. DROESCH, JOHN A. EVANS, and
CARL L. SILVERMAN, *Administrative Patent Judges.*

SILVERMAN, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1–12 and 14–28, which constitute all the pending
claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] The real party in interest is identified as Traxo, LLC. App. Br. 2.

STATEMENT OF THE CASE

Appellants' invention relates to automatically organizing and communicating a person's travel plans to selected friends and acquaintances in an extended social network. Abstract; Spec. ¶¶ 2–5. Claim 1 is exemplary of the subject matter on appeal:

1. A method, comprising:

initiating access by a data processing system to a first online data source over a network by initiating a login into the first online data source using login credentials of a first user, wherein the access is repeatedly initiated according to a first schedule;

pulling first travel information by the data processing system from the first online data source, the first travel information relating to a first reservation of the first user, the first travel information associated with a first location;

automatically detecting second travel information by the data processing system from a data record that is pushed to the data processing system by a second online data source, the second travel information relating to a second reservation of the first user, the second travel information associated with a second location;

deriving trip information by the data processing system from the pulled first travel information and the pushed second travel information, wherein the trip information relates to a first trip of the first user and is associated with the first reservation and the second reservation;

displaying a notification to the first user on a display when the trip information related to the first trip overlaps with information related to a second trip of the first user and receiving a resolution for the overlap from the first user;

displaying a notification to the first user on the display when the trip information indicates that the first user will travel to a location in which a second user is identified in the data processing system as an expert, the second user being a registered member of the data processing system, the second

user also identified in the data processing system as a buddy of
the first user, the notification including an identity of the buddy;
in response to a trigger event associated with the first
trip, transmitting a buddy notification to the buddy via a
communication channel designated in a member profile of the
buddy and transmitting a friend notification to a friend that is
not a registered member of the data processing system via a
communication channel designated by the first user; and
displaying a notification to the first user on the display
when the buddy changes the member profile of the buddy in the
data processing system such that the changed member profile of
the buddy identifies the buddy as an expert of a new location;
wherein the first reservation is related to a first one of
travel, lodging, and car rental service, the second reservation is
related to a second one of travel, lodging, and car rental service,
and the trip information is derived based upon a comparison of
two or more of date/time, location, and duration information
relating to the first reservation and the second reservation, and
wherein the first location and the second location are
considered as a single location when a distance between the
first location and the second location is less than a specified
distance.

App. Br. 27–28 (Claims Appendix).

REJECTION

Claims 1–12 and 14–28 stand rejected under 35 U.S.C. § 101 because
the claimed invention is directed to a judicial exception (i.e., a law of nature,
a natural phenomenon, or an abstract idea) without significantly more. Final
Act. 12–13.

ANALYSIS

The Supreme Court in *Alice Corp. v. CLS Bank International*, 134 S.
Ct. 2347 (2014) reiterated the framework set out in *Mayo Collaborative*

Services v. Prometheus Labs. Inc., 132 S. Ct. 1289 (2012) for "distinguishing patents that claim . . . abstract ideas from those that claim patent-eligible applications of those concepts." *Alice,* 134 S. Ct. at 2355. The first step in the analysis is to determine if the claim is directed toward a patent-ineligible concept and, if so, the second step is to determine whether there are additional elements that transform the nature of the claim into a patent eligible application. *Alice,* 134 S. Ct. at 2355 (citing *Mayo,* 132 S. Ct. at 1297–98). The second step searches for an inventive concept that is sufficient to ensure that the patent amounts to significantly more than a patent on the patent-ineligible concept. *Alice,* 134 S. Ct. at 2355 (citing *Mayo,* 132 S. Ct. at 1294).

Appellants argue the Examiner errs in determining the claims are directed to "a series of steps of organizing trip information for users, determining and resolving overlapping trips, and sending notifications to users, which is a fundamental economic practice in the reservation industry, therefore an abstract idea" and the Examiner fails "to properly apply the *Mayo* test." App. Br. 15 (citing Final Act. 13). According to Appellants, claim 1 does not claim a mere fundamental economic practice because it "recites a specific implementation that performs specific operations using specific data" and "[t]hese operations represent significantly more than just an abstract idea." *Id.* at 17. Appellants argue "these operations represent a modern technology that is necessarily dependent on computer systems and an idea that does not exist before the time of computers." *Id.* (citing *DDR Holdings, LLC v. Hotels.com, L.P.,* 773 F.3d 1245 (Fed. Cir. 2014). Appellants further argue claim 1 recites numerous elements and "would not

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tie up any fundamental economic practice" and concludes"[t]he claims are therefore not directed merely to a patent-ineligible concept." *Id.* at 19.

Appellants further argue claim 1 is directed to significantly more than an abstract idea because the claim "includes numerous elements related to specific data and specific operations." *Id.* at 19. Appellants argue the operations recited in claim 1 create an ordered combination that is not well understood, routine, or conventional, and that is not previously known in the industry–and this is further supported by the lack of a prior art rejection. *Id.*

Appellants additionally argue identified dependent claims 5, 11, 12 16, 22, 27, and 28 recite additional elements that are not within the abstract idea of a fundamental practice in the reservation industry and these elements extend substantially beyond the mere concept of a fundamental economic practice in the reservation industry. App. Br. 21–25; Reply Br. 11. For example, Appellants argue claim 5, which recites "determining that a current date is the same as a return date of the first trip of the first user; and providing, on the current date, a message to the first user and the second user, who is the buddy of the first user, regarding the return date of the first trip," combine to create an ordered combination that is not well-understood, routine, or conventional and that is not previously known to the industry. App. Br. 22. Appellants further argue the Examiner over-generalizes claim 5 and ignores the elements of claim 5 that extend substantially beyond the mere concept of a fundamental economic practice in the reservation industry. *Id.* Appellants present similar arguments regarding the remaining

identified dependent claims 11, 12 16, 22, 27, and 28. *Id.* at 22–25; *see also* Reply Br. 11.

The Examiner determines:

Claim 1 has thus been directed towards a series of steps of accessing a database, transmitting travel information from the database, detecting new information in a second database, determining trip information, displaying a notifications to a first user based on a comparison of trip information, transmitting a notification to a second user, and displaying notifications to a first user when changes are made with the second user; thus using categories to organize, store, and transmit information, and using mathematical correlations to organize information; thus an abstract idea. More simply, the organization of first and second travel information in databases, and using mathematical correlations of the travel information to identify overlapping data, and transmitting information to users, is an abstract idea. The Appellant has failed to direct the claim limitations, taken individually or in combination, to something that amounts to significantly more than the abstract idea because merely receiving information, transmitting information, and displaying information are deemed extrasolution activity.

Additionally, the implementation of the generic computer elements (data processing system and a network) recited in high generality, fail to amount to significantly more than the recited abstract idea, as their implementation would be well-known, routine, and conventional in any computer implementation of the abstract idea. Particularly, the mere use of applying a computer and a network to organize first and second travel information in databases, use mathematical correlations of the travel information to identify overlapping data, and transmitting information, such as notifications and buddy requests to users fails to amount to significantly more than the abstract idea.

Ans. 4–5.

The Applicant's claimed invention, as shown above, is not directed a problem specifically arising in the realm of computer networks, but instead to mere using categories to organize, store, and transmit information, and using mathematical correlations to organize information, with the mere addition of taking place using a computer and a network to transmit information. The Applicant has failed to direct the claimed invention towards the actual computer network, or a problem arising in it, and instead has merely relied on said network to transmit travel information and notifications, which are well-known, routine, and conventional activities in the realm of computers.

Ans. 7.

It is first noted that the Appellant has failed to actually identify any limitations that amount to significantly more than the abstract idea, and instead has made a general allegation that the stated claim includes "numerous elements related to specific data and specific operations. This is 'substantially more' than any alleged abstract concept." Second, the Examiner notes that this conclusion by the Appellant is incorrect and falsely equates all extrasolution activity and field of use activity to significantly more than the abstract idea. The Examiner notes that merely grounding the claimed invention the realm of reservations and travel, the Applicant has merely narrowed the abstract idea with a field of use.

Additionally, the courts have recognized the following computer functions to be well understood, routine, and conventional functions when they are claimed in a merely generic manner: receiving, processing, and storing data, electronic recordkeeping, and receiving or transmitting data over a network, e.g., using the Internet to gather data. In particular, the Examiner notes that the mere fathering of first and second travel information is simple using the Internet to gather data, and thus not significantly more than the abstract idea. Additionally, displaying notifications to alert a user to correlated data, displaying a notification to a buddy, and displaying a notification to a user regarding the buddy, is merely the transmission and outputting of data over a

network and thus fails to amount to significantly more than the abstract idea.

Ans. 8–9.

> Additionally, when considering if the claimed limitations, when viewed in individually or in combination, amount to significantly more, the Examiner notes that the Appellant has merely further recited within the claim, beyond the abstract idea, the steps of data gathering and data output, and the field of use of the abstract idea, and thus the Appellant has failed to claim anything more than extrasolution activity.

Ans. 10.

> The Examiner notes that claim 5 (and by similarity claims 16 and 22), recites, "determining that a current date is the same as a return date of the first trip of the first user; and providing, on the current date, a message to the first user and the second user, who is the buddy of the first user, regarding the return date of the first trip." The Examiner notes that this claim recites the same abstract idea identified within claim 1 of "using mathematical correlations to organize information." In particular, the use of correlations between the date and store data to organize information is merely an abstract idea. Additionally, the mere transmission of information (providing a message) is deemed extrasolution activity, as it is mere well-known, routine and conventional activity. Therefore the Examiner maintains that this rejection is proper.

Ans. 12.

Appellants additionally argue the Examiner overgeneralizes the claim and errs as, "simply because Claim 1 may *involve*, at some level, using computers to organize, store and transmit information, and using mathematical correlations to organize information, this does not mean that the claim is *directed* to that idea." Reply Br. 3 (citing *Enfish, LLC v.*

Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016). Appellants also argue the Examiner errs by not evaluating the additional elements in the argued identified dependent claims and does not evaluate these claims as a whole as required under the two step analysis of *Mayo*. Reply Br. 11.

We conclude each of Appellants' claims on appeal is distinguishable from the type of claim considered by the court in *Enfish* as none of Appellants' claims is "directed to an improvement in the functioning of a computer," as was found by the court regarding the subject claim in *Enfish*, 822 F.3d at 1338. Similarly, we conclude none of the claims provides a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR*, 773 F.3d at 1257. Regarding *Enfish* and *DDR*, we note the Specification provides no basis to support Appellants' arguments. *See*, for example, Spec. ¶¶ 3–7, 88–97.

To the extent that the recited steps or acts may be performed faster or more efficiently using a computer, our reviewing court provides applicable guidance:

> While the claimed system and method certainly purport to accelerate the process of analyzing audit log data, *the speed increase comes from the capabilities of a general-purpose computer, rather than the patented method itself.* See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.), 687 F.3d 1266, 1278 (Fed. Cir. 2012) ("[T]he fact that the required calculations could be performed *more efficiently* via a computer does not materially alter the patent eligibility of the claimed subject matter.").

FairWarning IP, LLC v. Iatric Sys., Inc., 839 F.3d 1089, 1095 (Fed. Cir. 2016) (emphasis added). *See also Electric Power Grp. LLC v. Alstom S.A* , 830 F.3d 1350 (Fed. Cir. 2016), to the extent that Appellants' claims

similarly collect information, analyze it in some fashion, and present or communicate the result. The Court in *Electric Power* guides: "we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." 830 F.3d at 1354 (internal citations omitted).

Applying this reasoning to Appellants' claims on appeal, we similarly find any purported faster or more efficient performance of the claimed steps or acts merely comes from the capabilities of a general-purpose computer and/or computer related elements, rather than from Appellants' claimed steps or functions.

In summary, we are not persuaded by Appellants' arguments. *Alice*, 134 S. Ct. at 2347.

Applying the first step, we agree with the Examiner that claim 1 is directed to the identified abstract ideas and we determine the claim is directed to a patent-ineligible concept.

Having determined that the claim is directed to a patent-ineligible concept, step 2 of the analysis considers whether the claim contains an inventive concept such as additional limitations that narrow, confine or otherwise tie down the claim so that it does not fully cover the abstract idea itself. *See Alice,* 134 S. Ct. at 2357. Here, we agree with the Examiner that no inventive concept is present. Moreover, the hardware features are the type of generic element that has been determined to be insufficient by the Supreme Court to transform a patent-ineligible claim into one that is patent-eligible. *See Alice,* 134 S. Ct. at 2358. The claim includes no limitations that prevent it from covering the abstract idea itself. Therefore, we are

unpersuaded by Appellants' argument that the claims constitute an inventive concept that is significantly more than a patent on the patent-ineligible concept.

The discussion, *supra*, regarding claim 1 is also applicable to the identified dependent claims 5, 11, 12 16, 22, 27, and 28 as these claims are directed to the same abstract idea and constitute well known extrasolution activity.

In view of the above, we sustain the rejection of claim 1, and independent claims 14 and 20, which are commensurate in scope with claim 1 and argued together with claim 1. We sustain the rejection of identified dependent claims 5, 11, 12, 16, 22, 27, and 28, discussed *supra*, and we also sustain the rejection of claims 2–4, 6–10, 15, 17–19, 21, and 23–26 as these claims are not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner's decision rejecting claims 1–12 and 14–28.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED